

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the United States Environmental Protection Agency ("EPA") (collectively, "the United States") and Severson Environmental Services, Inc. (hereafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. Severson Environmental Services, Inc. ("Severson") is a New York corporation headquartered in Niagara Falls, New York. Severson provides environmental remediation services and, at all times relevant to this Agreement, provided such services as the prime contractor at the Federal Creosote Superfund Site in Manville, New Jersey.

B. Severson performed the remediation of Federal Creosote, which was funded by the EPA, pursuant to two Pre-Placed Remedial Action Contracts: #DACW41-01-D-001 and #W912DQ-04-D-0023. Severson performed a significant portion of the work at Federal Creosote through subcontractors. These subcontractors submitted invoices to Severson for payment for the services they performed under their subcontracts, and Severson included the costs it incurred under these subcontracts in its vouchers for payment that it submitted to the Army Corps of Engineers.

C. Severson had authority to select and oversee subcontractors at Federal Creosote. Gordon McDonald ("McDonald"), Severson's Project Manager at Federal Creosote from approximately November 2000 through June 2005, and Norman Stoerr ("Stoerr"), Severson's Assistant Project Manager/Contracts Administrator from

approximately January 2002 through October 2003, had authority to solicit bids and procure subcontracts at Federal Creosote on behalf of Severson.

D. The United States contends that it has certain civil claims against Severson under the False Claims Act, 31 U.S.C. §§ 3729-3733, the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, the Anti-Kickback Act, 41 U.S.C. §§ 8702-8707, and the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud, arising from the conduct described below at Federal Creosote from 2000 through 2007:

1. McDonald and Stoerr solicited and accepted kickbacks in exchange for the award of subcontracts and conspired with some of the subcontractors to pass these kickbacks on to the EPA. These kickbacks included: (a) approximately \$25,000 from National Industrial Supply, LLC; (b) approximately \$138,000 from Ray Angelini, Inc.; (c) approximately \$53,000 from Haas Sand and Gravel, LLC; (d) approximately \$30,000 from Elite Landscaping, Inc.; (e) approximately \$51,000 from JMJ Environmental, Inc.; and (f) over \$1 million from Bennett Environmental, Inc. (“BEI”);

2. McDonald conspired with BEI to inflate the bid price for soil disposal at an unsecure facility by \$13.50 per ton, from \$405 per ton to \$418.50 per ton, and to pass these inflated charges on to the EPA;

3. McDonald conspired with BEI to inflate the bid price for soil disposal at a secure facility by \$13.50 per ton, from \$485 per ton to \$498.50 per ton, and to pass these inflated charges on to the EPA;

4. McDonald conspired with BEI to inflate the bid price for an indefinite delivery/indefinite quantity contract by at least \$50 per ton, and to pass these inflated charges on to the EPA; and

5. BEI disposed of over 20,000 tons of contaminated soil at a less expensive unsecure facility while charging for disposal at a more expensive secure facility. These inflated charges were passed on to the EPA.

The conduct described in this paragraph is referred to below as the “Covered Conduct.”

The Covered Conduct does not include the conduct alleged in the matter United States v. DeLuca et al., No. 11-CR-169 (W.D.N.Y. May 22, 2014).

E. Eight individuals (including Stoerr) and three subcontractors have pleaded guilty to, and McDonald has been convicted of, charges for their participation in the Covered Conduct.

F. This Settlement Agreement is neither an admission of liability by Severson nor a concession by the United States that its claims are not well founded. Severson denies that it has liability for the Covered Conduct set forth herein.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Severson shall pay to the United States two million, seven hundred and twenty seven thousand, and two hundred dollars (\$2,727,200) plus interest at a rate of three percent (3%) per annum from May 6, 2014, and continuing until the date of

payment (“Settlement Amount”) by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice and no later than 14 days after the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 3 (concerning excluded claims) below, and conditioned upon Sevenson’s full payment of the Settlement Amount, the United States releases Sevenson, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former owners; and current or former officers, directors, and affiliates; and the successors and assigns of any of them, from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the Anti-Kickback Act, 41 U.S.C. §§ 8702-8707; or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

3. Notwithstanding the release given in paragraph 2 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Any administrative liability, including the suspension and debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

- e. Any liability based upon obligations created by this Agreement;
- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g. Any liability for failure to deliver goods or services due;
- h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;
- i. Any liability of individuals (including current or former directors, officers, employees, agents, or shareholders of Severson) who receive written notification that they are the target of a criminal investigation (as defined in the United States Attorneys' Manual), are indicted or charged, or who enter into a plea agreement, related to the Covered Conduct.

4. Severson waives and shall not assert any defenses it may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

5. Sevenson fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Sevenson has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

6. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of Sevenson, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil and criminal investigation(s) of the matters covered by this Agreement;
- (3) Sevenson's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and criminal investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment Sevenson makes to the United States pursuant to this Agreement,

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by Severson, and Severson shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, Severson shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Severson or any of its subsidiaries or affiliates from the United States. Severson agrees that the United States, at a minimum, shall be entitled to recoup from Severson any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine Severson's books and records and to disagree with any calculations submitted by Severson or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Severson, or the effect of any such Unallowable Costs on the amount of such payments.

7. This Agreement is intended to be for the benefit of the Parties only.

8. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

9. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

10. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United

States District Court for the District of New Jersey. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

11. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

12. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

13. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.


14. This Agreement is binding on Severson's successors, transferees, heirs, and assigns.

15. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.


THE UNITED STATES OF AMERICA

DATED: 11/17/14

BY: _____


Jennifer Cihon, Esq.
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

SEVENSON ENVIRONMENTAL SERVICES, INC.



DATED: 11-14-14

BY: _____

Peter Spivack, Esq.

Counsel for Severson Environmental Services, Inc.

DATED: _____

BY: _____

Alan Bozer, Esq.

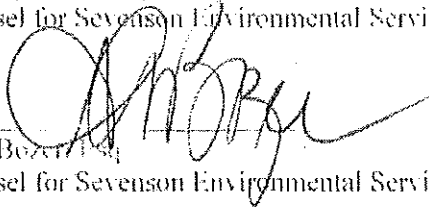
Counsel for Severson Environmental Services, Inc.

SEVENSON ENVIRONMENTAL SERVICES, INC.

DATED:

BY: _____
Peter Spivack, Esq.
Counsel for Severson Environmental Services, Inc.

DATED: 13 Nov 2014

BY: 
Alan Bozer, Esq.
Counsel for Severson Environmental Services, Inc.